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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-5903

H__ L__,

Appellant,

—v.—

HONORABLE SCOTT M. MATHESON, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF UTAH

BRIEF OF AMICI CURIAE PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., THE AMERICAN PUBLIC HEALTH ASSOCIATION, THE ASSOCIATION OF PLANNED PARENTHOOD PHYSICIANS, INC., THE AMERICAN ACADEMY OF CHILD PSYCHIATRY, THE AMERICAN ASSOCIATION OF SEX EDUCATORS, COUNSELORS AND THERAPISTS, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC., THE NATIONAL ABORTION FEDERATION, THE ASSOCIATION FOR WOMEN IN PSYCHOLOGY AND CERTAIN MEDICAL SCHOOL DEANS, PROFESSORS AND INDIVIDUAL PHYSICIANS IN SUPPORT OF THE APPELLANT

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tional Abortion Federation, the Association for Women in Psychology and the individual medical school deans, professors and physicians listed above respectfully submit this brief as *amici curiae* in support of the appellants. All parties have given their consent for filing of this brief in letters filed with the Clerk of this Court.

Interest of the *Amici*

Planned Parenthood Federation of America, Inc.

Planned Parenthood Federation of America, Inc., also known as Planned Parenthood-World Population (Planned Parenthood), is a not-for-profit corporation organized in 1922 and existing under the laws of the State of New York. Its headquarters are in New York City. It is the leading national voluntary public health organization in the field of family planning.

Planned Parenthood has 187 affiliates in 43 states and the District of Columbia, all of them separate not-for-profit entities. These affiliates operate approximately 744 family planning clinics offering services to the public. Most affiliates offer medical services including 36 which offer abortion services as part of their program. Eight affiliates are educational units without medical services. Most Planned Parenthood affiliates which do not perform abortions themselves offer pregnancy counseling and referral services.

Planned Parenthood provides its affiliates with guidance in the areas of contraception, voluntary sterilization, infertility, abortion, sex education and education for marriage and parenthood. Each of the affiliates offering medical services functions under strict medical standards promulgated by the National Medical Committee in conjunction with local medical committees.

These committees are made up of health professionals, the large majority of whom are physicians.

Planned Parenthood also functions as a clearing house for information and services relating to these same areas. It formulates medical and clinical standards which are available to its affiliates and generally on a nationwide basis and develops guidelines and materials relating to public and professional education in all aspects of family planning. Its Medical Director and other consultants confer with other national medical organizations, medical school faculties and local agencies in relation to teaching techniques, formation of clinics and the like.

Many of Planned Parenthood's affiliates operate in cooperation with local public health facilities. The affiliates are also teaching and training centers for physicians, nurses, teachers and social workers from this country and foreign countries and provide referral services for their clients to qualified medical specialists and facilities.

As a necessary corollary of its activities in the area of contraception, Planned Parenthood is committed to the principle that safe abortions should be available to all who need them. Planned Parenthood does not view abortion as an alternative to contraception; it believes, however, that abortion services are essential to protect women where contraception is unavailable, where it has not been used for some other reason and where it has failed.

Planned Parenthood's Medical Standards and Guidelines contain requirements for adequate pregnancy and abortion counseling which include standards for the qualifications and training of counseling personnel.

These Standards and Guidelines provide: "If patient consents, efforts should be made to involve significant members from the women's environment in the counseling process—i.e., boyfriend, husband, parents or others who may lend support." Planned Parenthood Manual of Medical Standards and Guidelines, Part One, Section VII-C (revised July 31, 1978). However, consent for the abortion must be required only of the woman who chooses the procedure. Manual of Medical Standards and Guidelines, Part One, Section VII-A (December 15, 1977).

American Public Health Association

The American Public Health Association is a national non-governmental organization established in 1872. Its object is to protect and promote personal and environmental health. With a membership of over 50,000, it is the largest public health organization in the world. Within this membership, both professional health workers and consumers act in a leadership role to develop a national policy for the provision of equitable, quality health care for all citizens.

Association of Planned Parenthood Physicians, Inc.

Planned Parenthood works closely with the Association of Planned Parenthood Physicians, Inc. (APPP), a New York not-for-profit corporation organized in 1974. APPP is the successor to the American Association of Planned Parenthood Physicians, an unincorporated association which was organized in 1963. In 1978, APPP had 850 members, all of whom were physicians or other health professionals associated with family planning.

APPP was formed for scientific, educational and charitable purposes and specifically to promote the on-

going interest in family planning in order to improve the stability and health of the family through responsible parenthood.

American Academy of Child Psychiatry

The American Academy of Child Psychiatry is a professional association of 2,300 child psychiatrists. It was founded in 1952 and is concerned with the stimulation and advancement of medical contributions to the knowledge and treatment of psychiatric problems of children and adolescents.

American Association of Sex Educators, Counselors and Therapists

The American Association of Sex Educators, Counselors and Therapists is a national nonprofit membership organization founded in 1967. Its aims are to assist those professionals responsible for sex education, counseling and therapy programs by providing training and standards of competency in these areas.

National Association of Social Workers, Inc.

The National Association of Social Workers is a nonprofit national organization of professional social workers which is devoted to the advancement of sound public policy for social work consumers as well as professionals. A substantial portion of its 80,000 members are employed in child welfare, in school social work and in family service agencies. More than one-third of its membership is engaged in providing health and mental health services in public, voluntary and private institutional and out-patient settings throughout the country.

National Abortion Federation

The National Abortion Federation is a national, non-profit organization composed both of professional individuals and groups providing abortion services and of others committed to making safe, legal abortion available to all women.

Association for Women in Psychology

The Association for Women in Psychology is a not-for-profit scientific and educational organization. It is committed to expanding opportunities for women in the profession of psychology and educating psychologists and the public to the psychological, social, political and economic problems of women. It has over 2,000 members, women and men.

Individual Physicians, Professors and Medical School Deans

The individual physicians who as *amici* subscribe to this brief all practice obstetrics and gynecology as their medical specialty or are responsible for the education of medical students and residents, some of whom are in training in the specialty of obstetrics and gynecology.

Concerns of the *Amici*

Amici all share a longstanding concern with the problem of teenage sexual activity and the attendant risk of teenage pregnancy which involves more than half the adolescent population. *11 Million Teenagers* (Alan Guttmacher Institute 1976); Klein, "Antecedents of Teenage Pregnancy", 21 Clinical Obstet. & Gynecol. 1151-59 (1978). Over 40% of the women in the United States aged 15-19 years in 1976 had experienced pre-

marital intercourse; over a million teenagers became pregnant, and of those, an estimated 780,000 were unmarried. Zelnik and Kantner, "Contraceptive Patterns and Premarital Pregnancy Among Women Aged 15-19 in 1976", 10 Family Planning Perspectives 135 (1978). Over 570,000 live births to women under 20 were registered in 1976. In 1976 and 1977, approximately one-third of all abortions were obtained by teenagers. Forrest, Sullivan and Tietze, "Abortions in the United States, 1977-1978", 11 Family Planning Perspectives 329 (1979); Tietze, "Teenage Pregnancies: Looking Ahead to 1984", 10 Family Planning Perspectives 205 (1978).

Amici believe that the effect of the Utah parental notification statute will be that parents may interfere with their daughter's decision to have an abortion, even when continuing the pregnancy is not in the best interests of the health of the minor woman. Furthermore, *amici* believe that if a minor knows that her parents will be notified, she may delay having an abortion until later in the pregnancy, when the risks of the procedure increase, or she will be forced, by default, to carry the pregnancy to term, which also poses greater medical and emotional risks to the minor than an early abortion. The possibility is great, moreover, that some minors will turn to illegal abortions or self-abortion.

Amici agree that parental involvement is appropriate and desirable. There are, however, many teenagers who will not consult with their parents, and there are many parents who are unable to cope with the situation and might either suffer physical or emotional harm themselves or inflict such harm upon their pregnant daughter. The Utah statute in many cases will

not further supportive parental involvement. Rather, it interferes with the minor woman's right to decide, with the advice of her physician, that an abortion is in her best interest, and thus unduly burdens her exercise of that right.

The Planned Parenthood Federation of America, Inc., the American Public Health Association, the Association of Planned Parenthood Physicians, Inc., the American Academy of Child Psychiatry, the American Association of Sex Educators, Counselors and Therapists, the National Association of Social Workers, Inc., the National Abortion Federation, the Association for Women in Psychology and the individual medical school deans, professors and physicians named above, by reason of their long experience and knowledge of the health needs of adolescents believe that they are in a unique position to aid the Court in its resolution of the issues raised in this case. *Amici* have assembled relevant and recent scientific findings which are discussed herein.

Statutory Provisions Involved

The issue in this case is the constitutionality of Utah Code Annotated § 76-7-304(2) (1953) which requires parental notification when a minor woman wishes to obtain an abortion, as follows:

> To enable the physician to exercise his best medical judgment, he shall: . . . (2) notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed if she is a minor or the husband of the woman, if she is married.

Pursuant to § 76-7-314(3) of the Utah Code, this section is incorporated in the criminal code. A violation is

punishable by a fine not to exceed $1,000, § 76-3-301(3), and imprisonment not to exceed one year. § 76-3-204(1).

The Utah Supreme Court upheld the parental notification statute. *H__ L__ v. Matheson*, No. 16249 (S. Ct. Utah Dec. 6, 1979). In so doing, the court interpreted the statute as requiring only "limited parental involvement". Slip op., at 9. The court also held that the phrase "if possible" meant that parental notification was required in all cases where, "in the exercise of reasonable diligence," the physician could ascertain the parents' identity and location. Slip op., at 10.

SUMMARY OF ARGUMENT

In *Bellotti v. Baird*, ____ U.S. ____, 99 S. Ct. 3035 (1979), this Court invalidated a Massachusetts statute which required a minor seeking an abortion to obtain parental consent or, in the alternative, the approval of a court; the statute mandated "parental notification and consultation in all instances." *Id.* at 3052. The Utah statute at issue in this case requires parental notification for minors seeking abortion unless it is physically impossible.

The effect of the Utah statute is not ameliorated by the fact that it requires only parental notification and not consent. The effect of such a provision will be that minors who are fearful that their parents will be notified will turn to illegal abortionists or self-abortion with the severe health risks that both alternatives imply. Or, some minors will delay the decision to have an abortion until they must have a late-trimester abortion or carry the pregnancy to term. Both of these possibilities also entail increased health risks.

In addition, the Utah statute substantially interferes with the confidential relationship between the physician and his minor patient. This relationship is crucial to the provision of optimal health care in the best interest of the minor woman.

As the Utah statute does not operate to protect the minor woman's health, and since the state cannot hope to enforce supportive parental consultation through regulation, the Utah statute does not serve the minor's best interest. The statute is an unconstitutional interference with the minor woman's fundamental right to decide, in consultation with her physician, to terminate an unwanted pregnancy.

ARGUMENT

I. THE UTAH STATUTE'S REQUIREMENT OF PARENTAL NOTIFICATION FOR ALL MINORS IS AN UNCONSTITUTIONAL INTERFERENCE WITH A MINOR WOMAN'S FUNDAMENTAL RIGHT TO ABORTION IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

This Court approved provision of safe, legal abortions in *Roe v. Wade*, 410 U.S. 113 (1973). The woman's fundamental right to decide, in consultation with her physician, to have an abortion, was held to protect minor women in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976) where this Court observed,

> Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults,

> are protected by the Constitution and possess constitutional rights. 428 U.S. at 74.

The Utah parental notification statute presents an overwhelming burden to many minors who need a legal abortion. While *amici* consider supportive parental involvement to be the ideal situation, they also recognize that in many instances parents will not help their daughter to make a rational decision in her best interests. Indeed, parents may be punitive or even abusive when they learn that their daughter has decided to have an abortion.

This Court's previous decisions are clear that an absolute requirement of parental involvement in the abortion decision, whether by notification or consent, is unconstitutional. Indeed, a notification requirement which allows no exceptions has the same harmful consequences as a requirement of parental consent. This Court has been continuously watchful of the minor woman's fundamental right to decide to prevent or terminate a pregnancy. *Carey v. Population Services International*, 431 U.S. 678 (1977); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976); *cf. Eisenstadt v. Baird*, 405 U.S. 438 (1972).

One of the reasons for invalidating the statutory scheme in *Bellotti v. Baird*, ____ U.S. ____. 99 S. Ct. 3035 (1979) was that the Massachusetts statute required "parental *notification* and consultation in all instances." *Id.* at 3052. (Emphasis added). The Massachusetts statute was held to be an unconstitutional interference with a "right of unique character." *Id.* In concurrence, four justices noted that the right to privacy encompassed both the right to independent decision making and the right to "avoid disclosure of

personal matters." 99 S. Ct. at 3054, citing *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977).

Two recent Federal District Court decisions dealt with the issue of parental notification for minors seeking abortion. The Louisiana District Court in *Margaret S. v. Edwards*, No. 78-2765 (D. La. Feb. 29, 1980) applied the holding in *Bellotti* to a Louisiana parental notification statute. Noting that this Court had focused on the unconstitutionality of requiring "consultation or notification in every instance," citing *Bellotti v. Baird*, 99 S. Ct. at 3052, the Louisiana court held that parental notification would have a "chilling effect on the minor's right to independently make . . . decisions which are the basis of a woman's constitutional right to obtain an abortion." Slip op. at 25. The Court rejected a proffered state interest that notification would encourage consultation between the minor and her parents since "merely giving notice to the parents does not assure that there will be any meaningful dialogue." *Id.*

In *Women's Community Health Center v. Cohen*, 477 F. Supp. 542 (D. Me. 1979), the Maine District Court cited *Bellotti* as supporting the proposition that a blanket parental notification requirement, as well as a parental consent requirement, was unconstitutional. The court further noted that

> Plaintiffs have introduced affidavits of expert witnesses showing that in some instances the involvement of parents in a minor's abortion decision will be harmful to both the minor and the family relationship. These affidavits disclose that in some cases parents will pressure the minor, causing

> great emotional distress and otherwise disrupting the family relationship. Id. at 548.

The Maine court also stated that parental notification would cause minors to delay abortion, thereby increasing medical risks, or cause minors to seek out illegal abortionists. *Id.*

Both these decisions reflect the central teaching of *Bellotti*, that is, the minor must be protected in her fundamental right to secure an abortion when she has determined, with her physician, that an abortion will be in her best interests.

The parent-child consultation mandated by a notification requirement supposedly provides the child with her parents' mature view. In the case of a mature minor, however, this Court has recognized her ability to consent, after consultation with her physician, to the abortion procedure. *Bellotti v. Baird*, 99 S. Ct. at 3050. The mandatory involvement of her parents, therefore, should not be a prerequisite to the decision. Even the immature minor must be protected from hostile parental reaction and "she must be permitted to show that an abortion nevertheless would be in her best interest," without parental notification. *Id.*

In recognition of the fact that parental notification and/or consent is not always available or desirable, the common law has evolved a doctrine of the "mature minor" who is capable of giving consent to medical treatment. *Younts v. St. Francis Hospital*, 205 Kan. 292, 469 P.2d 330 (1970); *Smith v. Seibly*, 72 Wash.2d 16, 431 P.2d 719 (1967); *Lacey v. Laird*, 166 Ohio St. 12, 139 N.E.2d 25 (1956); *Gulf & Ship Island R.R. v.*

Sullivan, 155 Miss. 1, 119 So. 501 (1928); *Bishop v. Shurley*, 237 Mich. 76, 211 N.W. 75 (1926). A "mature minor" is generally defined as one who is sufficiently intelligent to understand the nature and consequences of the proposed treatment which must be for the minor's benefit. See *Bonner v. Moran*, 126 F.2d 121 (D.C. Cir. 1941.)* Several states have codified the mature minor standard and, by statute, allow unemancipated minors to consent to medical care even when no constitutional right to sex-related health care is involved. Ark. Stat. Ann. § 82-363 (1973); Miss. Code Ann. § 41-41-3h (Cum. Supp. 1979); N.H. Rev. Stat. Ann. § 318-B:12-a (Supp. 1979).

This Court has recognized that both a mature and an immature minor must be able to obtain an abortion without parental notification. Thus, it was held in *Bellotti* that a mature minor must be able to obtain a court order for an abortion without notification to her parents. Even if a minor is immature, "she must be permitted to show that an abortion nevertheless would be in her best interest" without parental involvement. *Bellotti v. Baird*, 99 S. Ct. at 3050. This Court recognized in *Bellotti* the overriding importance of protecting even the immature minor from the possible adverse consequences of requiring that parents always be informed that their daughter is seeking an abortion.

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* In *Bonner*, a minor consented to donate a skin graft for his cousin. The court held that parental permission was necessary since the operation was not for the minor's benefit. The court recognized that mature minors can give effective consent for medical services which are for their benefit.

II. WHEN NOTIFIED OF THEIR MINOR DAUGHTER'S PREGNANCY, NOT ALL PARENTS WILL BE ABLE TO ACT IN THE BEST INTERESTS OF THE MINOR. THE UTAH STATUTE, THEREFORE, DOES NOT PROMOTE HEALTH CARE IN THE BEST INTEREST OF THE MINOR.

The Utah notification statute makes no allowance for situations where the family environment is such that the minor woman cannot realistically turn to her parents for support. Although the Utah Supreme Court characterizes the statute as only "encouraging . . . an unmarried pregnant minor to seek the advice of her parents," *H__ L__ v. Matheson*, slip op., at 9, the effect of the Utah parental notification requirement for too many minor women will be added delay or outright interference with a minor's considered decision to have an abortion.

If parents are notified of their daughter's decision to have an abortion, they may react in keeping with their own beliefs or prejudices, and not in their daughter's best interest.* The teenager's best interest is the standard which this court required in *Bellotti v. Baird*, 99 S. Ct. at 3051.

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* In fact, a survey by the National Center for Health Statistics found that parents do not accurately perceive their minor children's health needs. Parents expressed greater concern over the health of younger children than older, while the statistical presence of significant medical abnormalities increased with the child's age. National Center for Health Statistics, Ser. 11, No. 129, *Examination and Health History Findings among Children and Youths 6-17 Years — United States* 6, 31, 32 (HEW Pub. No. (HRA) 74-1611, 1973). Thus in addition to the problem of parents judging the pregnant minor's situation on the basis of their own prejudices rather than on what is in their daughter's best interest, many would not even comprehend the full range of medical risks which their daughter faces if she continues a pregnancy.

In *Roe v. Wade*, this Court recognized the effect of personal beliefs on an individual's reaction to abortion:

> One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusion about abortion. 410 U.S. at 116.

This observation was expanded in *Bellotti*:

> But many parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and their access to court. 99 S. Ct. at 3050.

Thus, in addition to the problems of dealing with an unwanted pregnancy, a minor will be influenced by the attitudes she encounters among her family. These attitudes will add to the woman's psychological trauma, so that even if her parents do not forbid an abortion, she will fail to seek immediate medical assistance. Bracken and Swigar, "Factors Associated with Delay in Seeking Abortion", 113 Am. J. Obstet. & Gynecol. 301 (1972).

In a home where parents are supportive and there has been open communication and acceptance of sexuality, a minor may be able to turn to her parents at this stressful time. Where the familial situation is such, however, that communication has been impossible before the pregnancy, notifying the parents will not encourage the "consultation" that the Supreme Court of Utah envisions. *H__ L__ v. Matheson*, slip op. at

4. As the Federal District Court of Massachusetts stated,

> If the family relationship is such that communication has not been attempted, or successful, before the pregnancy, we agree with the expert who doubted the efficacy of a last-minute, state-compelled consultation. *Baird v. Bellotti*, 450 F. Supp. 997, 1003 (D. Mass. 1978).

This Court also noted in *Planned Parenthood v. Danforth*,

> Neither is it likely that such veto power will enhance parental authority or control where the minor and the nonconsenting parent are so fundamentally in conflict and the very existence of the pregnancy already has fractured the family structure. 428 U.S. at 75.

Unfortunately, as the courts have recognized, parental reactions to a minor daughter's pregnancy can often range from hostility, guilt and anger to outright abuse. Furstenberg, *Unplanned Parenthood: The Social Consequences of Teenage Childbearing* 55 (1976); Osofsky and Osofsky, "Teenage Pregnancy: Psychosocial Considerations", 21 Clinical Obstet. & Gynecol. 1164-65 (1978). Again, the Massachusetts District Court noted the possibility of hostile parental reaction when it said,

> . . . there are a variety of recognized reasons why it would be to a minor's best interests for one or both of her parents to be kept in ignorance of her pregnancy. Parents, physically or emotionally unwell, may be injured by the shock, thus causing the minor deep feelings of guilt. Some parents are

> child abusers; others at least may become actively hostile on such disclosure. Defendants concede, and the evidence shows, that an appreciable number of parents are not supportive. These include not only those who would inflict physical harm, but parents who would insist on an undesired marriage, or on continuance of the pregnancy as punishment. *Baird v. Bellotti*, 450 F. Supp. 997, 1001. See also, *Wynn v. Carey*, 582 F.2d 1375, 1388 n. 24 (7th Cir. 1978).

One study of teenage pregnant women found that their family histories were characterized by broken or chaotic homes. Babikian & Goldman, "A Study of Teenage Pregnancy", 128 Am. J. Psychiatry 755, 759 (1971). Another study discovered that when teenage women were at a high risk of pregnancy,* there was also a high incidence of incestuous or quasi-incestuous relationships between the fathers and daughters. Abernethy and Abernethy, "Risk for Unwanted Pregnancy Among Mentally Ill Adolescent Girls", 44 Am. J. Orthopsychiatry 442, 447 (1974). A requirement of parental notification in such cases is almost unimaginable, yet the Utah statute allows no exception unless it is *physically* impossible to contact the parents.

Another facet of the communication problem is the minor woman's perception of her parents' reaction. The teenager's belief that her parents will not be supportive may derive from her own fears or from attitudes al-

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* "High risk of pregnancy" was defined in terms of teenage women who were sexually active and did not use contraception during the time period of the study.

ready expressed by her parents either openly or covertly. Studies strongly suggest that there is a substantial correlation between parental ignorance or unwillingness to discuss contraception and the minor woman's subsequent misinformation and inability to speak with her parents about her pregnancy. Baudry and Wiener, "The Pregnant Patient in Conflict About Abortion: A Challenge for the Obstetrician", 119 Am. J. Obstet. & Gynecol. 705 (1974); Zelnik and Kantner, "Contraceptive Patterns and Premarital Pregnancy Among Women Aged 15-19 in 1976", 10 Family Planning Perspectives 135 (1978); Zelnik and Kanter, "First Pregnancies to Women Ages 15-19: 1976 and 1971", 10 Family Planning Perspectives 11 (1978).

A survey of teenage attitudes toward sex conducted by Dr. Robert Sorenson found that 72% of the boys and 70% of the girls felt that they could not talk to their parents about sex. Sorenson, *Adolescent Sexuality in Contemporary America* 74 (1973).

The effect of lack of parent-child communication is vividly illustrated by studies of parental notification and contraceptive use among teenagers. These studies found that if parental notification were required for teenagers attending family planning clinics, many teenagers would not attend. Pearson, "Social and Psychosocial Aspects of Extra-Marital First Conceptions," 5 J. Biosoc. Sci. 453 (1973); Tietze, "Teenage Pregnancies: Looking Ahead to 1984", 10 Family Planning Perspectives 205 (1978); Torres, "Does Your Mother Know . . . ?" 10 Family Planning Perspectives 280 (1978).

Fear, shame and inability to communicate with her parents will often cause a minor to employ harmful

means to terminate a pregnancy. The greatest threat to the minor's well-being is that she may be driven to illegal abortionists, who will not inform her parents, or to self-abortion. Kahan *et al.*, "The Effect of Legalized Abortion on Morbidity Resulting from Criminal Abortion", 121 Am. J. Obstet. & Gynecol. 114 (1975); Semmens and Lamers, *Teenage Pregnancy* 14-21 (1968). For these teenagers, the Utah notification statute will have exactly the opposite effect to the one which was desired; it will not protect the minor's health, but rather will severely threaten it.

Another alternative which has been resorted to by many frightened teenagers is suicide. In a 1972 study of teenage suicide attempts, Dr. Teicher found that 22% of the girls who attempted suicide were pregnant or believed they were pregnant at the time of the attempt. This was in strong contrast with a control group of girls who did not attempt suicide. None of the control group were pregnant or believed themselves to be pregnant. Teicher, "A Solution to the Chronic Problem of Living: Adolescent Attempted Suicide", *Current Issues in Adolescent Psychiatry* 136 (Brunner-Mazel 1973).

A third harm that can result from a parental notification statute is that it will add to the documented tendency of minors to delay seeking medical care. See *In Re Diane*, 318 A. 2d 629 (Del. 1974). Adolescents are already over-represented among women receiving second trimester abortions, which pose significantly greater health risks than earlier procedures. Department of Health, Education and Welfare, Decision Memorandum (Schuck Report) (1977). This delay often occurs because the unmarried minor woman, upon

learning that she is pregnant, will react with fear and confusion. Shouse, "Psychological and Emotional Problems of Pregnancy in Adolescence", in *The Teenage Pregnant Girl* 161-68 (Zackler & Brandtadt eds. 1975); Martin, "Psychological Problems of Abortion for the Unwed Teenage Girl", 88 Genetic Psychology Monographs 23 (1973). When a teenager knows that her parents must be notified if she decides to have an abortion, the added stress will often lead to her denying the reality of her pregnancy. See Cates, "Abortions for Teenagers", 1 J. Adolescent Health Care (in press); Baudry and Wiener, *supra*.

Given the many adverse ways in which the notification statute will impact adversely on the minor's decision, as advised by her physician, to have an abortion it is unrealistic for the State of Utah to suggest that the statute requires only a "minimal awareness on the part of the parent." Brief of Respondents, *H__ L__ v. Matheson*, No. 16249, at 5 (S. Ct. Utah).

With respect to those minors who feel that they can inform their parents, the statute is unnecessary, but as applied to those minors who cannot inform their parents, the statute will only injure the family relationship or the minor herself.

III. THE UTAH NOTIFICATION STATUTE SUBSTANTIALLY INTERFERES WITH THE CONFIDENTIAL RELATIONSHIP BETWEEN PHYSICIAN AND PATIENT WHICH IS ESSENTIAL TO THE OPTIMAL PROVISION OF HEALTH CARE, PARTICULARLY WHERE MINOR PATIENTS ARE INVOLVED.

If a minor cannot consult with her parents because of the nature of her relationship with them, and cannot trust her physician to keep her confidences, she will truly have no place to turn. The holding of *Roe v. Wade* that a woman has the right to decide to have an abortion in consultation with her physician, 410 U.S. at 164, will be seriously undermined by the Utah statute.

In many families, children cannot talk freely to their parents about sexual matters. Professional health care personnel may be the only adults to whom the pregnant minor can turn for guidance. Dauber, *et al.*, "Abortion Counseling and Behavioral Change", 4 Family Planning Perspectives 23 (April 1972).

Indeed, the State can further its aims of ensuring essential consultation through funding counseling services in abortion clinics. As one commentator noted,

> This kind of State action largely avoids the constitutional deficiencies of parental consultation and notice provisions. It leaves the mature minor free to make fundamental decisions without parental or judicial interference while providing the less mature child with the type of support and counseling reasonably capable of alerting her to the general risks involved in such decisions.

Note, "The Minor's Right of Privacy: Limitations on State Action after *Danforth* and *Carey*", 77 Col. L. Rev. 1216, 1241 (1977).

Professional counseling services are important not only in deciding whether to terminate a pregnancy, but in assisting the teenager after the decision is made, whether she has an abortion or continues the pregnancy. "(C)onsiderably more emphasis has been given to the psychological effects of abortion than to the psychological effects of carrying through an out-of-wedlock pregnancy and either keeping the baby or giving it up for adoption . . . (M)any females . . . persist in mourning the child whom they have given up for adoption, wishing that they had kept the child and wondering what he or she is like." Osofsky and Osofsky, *supra* at 1164. The physician, nurse and counsellor have been trained to assist the minor in dealing with her psychological and emotional difficulties as well as with her physical health. Baudry and Wiener, *supra*. Physicians and counsellors can maintain an objective viewpoint and can reassure the minor patient that they are there to meet her medical and emotional needs. Kalogerakis, "A Role for the Family Doctor", in *The Emotionally Troubled Adolescent and the Family Physician* 106, 110 (Kalogerakis ed. 1973).

The relationship between physician and patient is a sensitive and private area mandating legal protection. Cooper, "Physician's Dilemma: Protection of the Patient's Right to Privacy", 22 St. Louis U.L.J. 397 (1978). In order that a physician receive the complete information necessary for diagnosis and treatment of a medical condition, the patient must feel that his or her private life will not be available to anyone outside the

physician's office. *Hammond v. Aetna Casualty & Surety Co.*, 243 F. Supp. 793 (D. Ohio 1965); *Berry v. Moench*, 8 Utah 2d 191, 331 P.2d 814 (1958); Note, "Action for Breach of Medical Secrecy Outside the Courtroom", 36 U. Conn. L. Rev. 103, 105 (1967). This is especially true in the case of adolescents who are often sensitive and anxious about the development of their bodies. The consideration granted to adult patients when they seek medical care should not be abrogated simply because the patient is a minor. See *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. at 74-75.

The medical community recognizes the special need of the minor patient to have a confidential relationship with his or her physician.

> (Adolescents) have reached the stage of development where they can profit from, and they badly need, the benefits which a confidential relationship with a doctor of their own affords them. The more the visit can be managed in this way, the more will young people cooperate and the greater will be their own and their doctor's contribution to their own health and to the acquisition of maturity.

Gallagher, "The Care of Adolescents", in *Medical Care of the Adolescent* 57, 64 (3rd ed. Gallagher, Heald & Garell eds. 1977).

When Utah forces parental intrusion into the patient-physician relationship, the physician will find himself in a severe conflict of interest situation. His primary duty is to his patient, the minor woman who may not want to inform her parents. Yet the statute requires him to violate her wishes. Moreover, if the

parents are notified, the physician may be subjected to considerable pressure from them to deny the young woman an abortion which he and she agree is in her best interest. Thus, even if the physician believes that notification of parents would not be in the best interest of the minor woman, he faces a Hobson's choice: either he must contravene his own medical judgment and ethical duty by notifying the parents, or he violates the law by refusing to notify them.* See, Wilkins, "Children's Rights: Removing the Parental Consent Barrier to Medical Treatment of Minors", 1975 Ariz. St. L.J. 31, 69.

Because of the untenable position in which notification and consent statutes have placed the physician, the medical community has called for clarification and liberalization of these laws. Hofmann, "A Rational Policy Toward Consent and Confidentiality in Adolescent Health Care", 1 J. Adolescent Health Care (in press); Kalogerakis, *supra* at 112. As one specialist in pediatric medicine noted,

> The rights of parents pose a dilemma for most physicians. It seems that parents do have a right to know and be concerned about a child's health and what is done by a physician to or for the child. However, confidentiality is necessary if trust is to be established between the physician and adolescent patient. Consequently, violation of this trust can lead to potential danger to an

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* Utah Code Ann. § 76-7-314(3) (1953) provides that the parental notification statute is part of the criminal code. Failure to comply with the notification requirement is punishable by imprisonment not exceeding one year, Utah Code Ann. § 76-3-204(1), and a fine not exceeding $1,000. Utah Code Ann. § 76-3-301(3).

> adolescent's health, to pregnancy, nontreatment of venereal disease, or other conditions dependent on confidentiality. Daniel, *Adolescents in Health and Disease* 160 (1977).

In recognition of the need of minors for confidentiality, a recent American Bar Association study outlined the circumstances where a minor must be able to consent to medical treatment without notification to parents. Those areas include treatment for venereal disease, drug abuse and pregnancy-related treatment, including abortion:

> In dealing with this issue of notification of parents, this standard distinguishes between those types of treatment in which the interests of the parent and the minor will normally coincide and where notification of parents is appropriate and mandatory, and those circumstances where the interests of parent and child conflict . . . In the latter instances, the overriding social interests in enabling the minor to obtain the particular treatment dictate that unless the minor's health will be seriously jeopardized by failing to notify the parents, the minor's objection to disclosure should be honored by the treating physician.

Juvenile Justice Standards Project, Institute of Judicial Administration, American Bar Association, *Standards Relating to Rights of Minors* 56-57 (Draft 1977, adopted, February 1980).*

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* The need for privacy in medical consultation has been highlighted by the introduction of the Medical Records Privacy Act, S.503, 96th Cong., 1st Sess. (1979). In an era of automatic record-keeping and centralized computer systems, the public is justifiably

Not only will the Utah parental notification statute harm the minor woman, but in many instances it will prevent the physician from acting in her best interest. A State regulation affecting minors must always be measured against the best interest of the minor. Here, where the regulation affects abortion, it must also comply with the strict standards that are used to evaluate a regulation which burdens fundamental rights. Under either standard, the Utah statute fails to satisfy constitutional requirements.

IV. SINCE PARENTAL NOTIFICATION MAY FORCE A MINOR TO FORGO OR DELAY AN ABORTION, THUS INCREASING THE HEALTH RISKS, THE UTAH STATUTE BEARS NO RATIONAL RELATIONSHIP TO THE WELL-BEING OF THE MINOR.

If a pregnant woman delays obtaining an abortion either through fear of parental notification or because her parents obstruct her decision, the risks from later abortion will substantially increase. The safest time for termination of a pregnancy is in the first trimester, preferably before eight weeks. " 'The Earlier the Safer' Applies to All Abortions", 10 Family Planning Perspectives 243 (1978). The risks of the abortion procedure increase after the eighth week. The possibility of major and minor complications (total morbidity) increase from 4.55 per 100 abortions at eight weeks to 5.47 per 100 abortions by twelve weeks. Thus, the risks to the woman will have risen 20% by the twelfth week over what they would have been at the eighth week. Cates,

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concerned that their privacy be safeguarded. Teenagers are not any less concerned with their privacy simply by virtue of their minority.

et al., "The Effect of Delay and Method Choice on the Risk of Abortion Morbidity", 9 Family Planning Perspectives 266 (1977).

The risk of major complications increases by an even greater percentage over the combined morbidity risk. The major morbidity risk is .23 per 100 abortions at eight weeks, but increases to .44 per 100 by the twelfth week, an increase of 91%. *Id.* Any obstacles to the woman's decision to obtain an abortion will, therefore, increase the health risks which the woman must face. *Wynn v. Carey*, 582 F.2d 1375 (7th Cir. 1978).

If the delay continues into the second trimester, the methods available for termination are significantly more risky for the woman. Benditt, "Second-Trimester Abortion in the United States", 11 Family Planning Perspectives 358 (1979). By the 16th week of pregnancy, the woman faces health risks from three to fifteen times as great as those faced in the eighth week. Cates, *et al.*, *supra*; Grimes *et al.*, "Methods of Midtrimester Abortion: Which Is Safest?" 15 Int'l J. Gynecol. & Obstet. 184 (1977).

When the abortion decision is made too late, or if parents have made an abortion decision by the teenager and physician impossible to implement, the minor faces significant risks in giving birth to a child. It is important to note that the risk of death for teenagers from pregnancy continuation is five times greater than the risk of death from abortion. Cates, "Abortions for Teenagers", *supra* at 6; Cates and Tietze, "Standardized Mortality Rates Associated with Legal Abortion: United States 1972-1975", 10 Family Planning Perspectives 109 (1978). Studies have shown that adolescent mothers are significantly more susceptible to toxemia,

preeclampsia and eclampsia (a form of convulsions that may lead to death). Andrews, "Problems of Teenage Mothers, Their Infants and Influence of Family Planning", 9 Pediatric Research 257 (1975); Coates, "Obstetrics in the Very Young Adolescent", 108 Am. J. Obstet. & Gynecol. 68, 72 (1970); Katchadourian, *The Biology of Adolescence* 143 (1977). Severe anemia may also be present, McGarity, *et al.*, "Pregnancy in the Adolescent: Preliminary Summary of Health Status", 103 Am. J. Obstet. & Gynecol. 773 (1969), and cephalopelvic disproportions (where the mother's pelvis is not large enough to permit the infant's head to pass), result in a greater number of Caesarian sections. Katchadourian, *supra* at 144; Zackler, *et al.*, "The Young Adolescent as an Obstetric Risk", 103 Am. J. Obstet. & Gynecol. 305 (1969). Risks such as these are exacerbated when the minor is poor and does not have access to intensive medical care, both before and during childbirth. Perkins, *et al.*, "Intensive Care in Adolescent Pregnancy", 52 Obstet. & Gynecol. 179, 186-88 (1978).

Children born to adolescent mothers are often characterized by prematurity, low birth weight and physical and neurological defects. Klein, "Early Teenage Pregnancy, Contraception and Repeat Pregnancy", 45 Am. J. Obstet. & Gynecol. 263 (1974). Perinatal, neonatal and infant mortality have been found to be higher for infants born to teenagers. Dott and Fort, "Medical and Social Factors Affecting Early Teenage Pregnancy", 125 Am. J. Obstet. & Gynecol. 532, 532-33 (1976); Nortman, "Parental Age as a Factor in Pregnancy Outcome and Child Development", 16 Reports Population/Family Planning 37 (Population Council, August 1974). Again, these complications can be somewhat assuaged by the provision of quality

health care, but for the disadvantaged teenager, or the teenager living in an area without adequate health care, the risks to her health and her child are greatly increased.

Aside from the medical risks which the teenage mother and infant must face, there are economic, psychological and social burdens as well. One commentator described the situation of a teenage mother in the following words:

> Adolescents frequently are extremely unrealistic, not only about the changes which pregnancy will produce in their lives, but also about appropriate maternal behavior and good child care. They are not prepared for the social and emotional isolation of motherhood at this early age. The adolescent girl may find herself with no social outlets and no satisfactory personal relationships, since her own peer group is absorbed in school activities and dating. Such a lonely, depressed girl may take her frustrations out on her child, and indeed, the incidence of child battering is greater in this age group. Perkins, *et al.*, *supra* at 185.

Early childbearing often means the end of educational advancement for the woman and thus curtails her employment opportunities. Hardy, *et al.*, "Long Range Outcome of Adolescent Pregnancy" in 21 Clinical Obstet. & Gynecol. 1230 (1978); Card and Wise, "Teenage Mothers and Teenage Fathers: The Impact of Early Childbearing on the Parents' Personal and Professional Lives", 10 Family Planning Perspectives 199 (1978). Teenage mothers frequently are not married and have to raise their children without a husband or

father or other means of support and therefore must turn to public assistance. Moore, "Teenage Childbirth and Welfare Dependency", 10 Family Planning Perspectives 233, 234 (1978).

A recent study found that children born to teenagers have significantly lower cognitive abilities than their counterparts born to older women. Baldwin and Cain, "The Children of Teenage Parents", 12 Family Planning Perspectives 34 (1980). Marriages which result from a teenage pregnancy have a high failure rate. McCarthy and Menken, "Marriage, Remarriage, Marital Disruption and Age at First Birth", 11 Family Planning Perspectives 21, 29 (1979). What is even more surprising is that there is a striking correlation between the mother's age at the birth of the first child and the dissolution of second marriages. Women who had their first child in their teen years were more likely to have their second marriages dissolve than women who had their first child after their minority. *Id.* at 29.

In those circumstances where parents, once notified of their daughter's decision to have an abortion, will interfere with that decision, the Utah statute frustrates the minor's best interest since it may force her to undergo the contraindicated medical risks of a late abortion or childbirth. If the minor's family situation is such that she can confide in her parents, she will do so. If this is not the case in a particular minor's family, the state cannot hope, by statute, to enforce an environment of love and trust. Indeed, the results may be harmful, or even fatal, to the minor woman.

CONCLUSION

For the reasons stated in this brief and in the brief of appellants, *amici* respectfully urge that this Court reverse the judgment of the Supreme Court of Utah and declare Utah Code Annotated § 76-7-304(2) unconstitutional.*

Respectfully submitted,

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